

*Hanson*

**Nation: On the Water**

# Leaving California High and Dry

By Gayle M.B. Hanson

**The fight for water in the West still plays out like a Republic Pictures cowboy movie. Only now there are millions at stake and the government is neck deep in some very murky deals.**

In the heart of California's Central Valley, the thousands of miles of irrigation pipelines, drains and ditches of the U.S. Bureau of Reclamation's Central Valley Project crisscross the landscape, bringing life to a man-made Eden that otherwise would blister and scorch — a cardboard-flat wedge languishing bone dry from the edge of the Sierra Nevada Mountains to the foothills of the coastal range.

Here, under a blood-orange sun, former farmer Keith Freitas stands in a field of knee-high sugar beets and curses first his neighbor, then the government, as he looks across 750 acres of fields once under his care that now are being tended by someone else.

"I stand here today and I look at this land and it breaks my heart," he swears. "What happened out here was wrong, plain and simple. But nobody gives a damn. Nobody."

In a region of the country where water is as good as gold, it's a rare instance when there's too much of it. But on March 9, 1995, the skies opened up along the coastal mountains in a deluge that lasted three days, sending torrents of water onto the flatlands where they flowed north toward the lowest point in the valley.

Like other farmers in the region Freitas obsessively monitored his acreage during the storm, and like others he was relieved when the rains stopped and a weak sliver of light finally broke through the clouds. But it was then that disaster struck. For sometime during this lull in the torrents, workers for farmer Don Gragnani, Freitas' adjacent neighbor, went onto federal property and erected at

least one dike, and possibly two, that blocked two roads designed to carry water across the federal government's San Luis Drain, which has been closed since 1986 because of pollution problems.

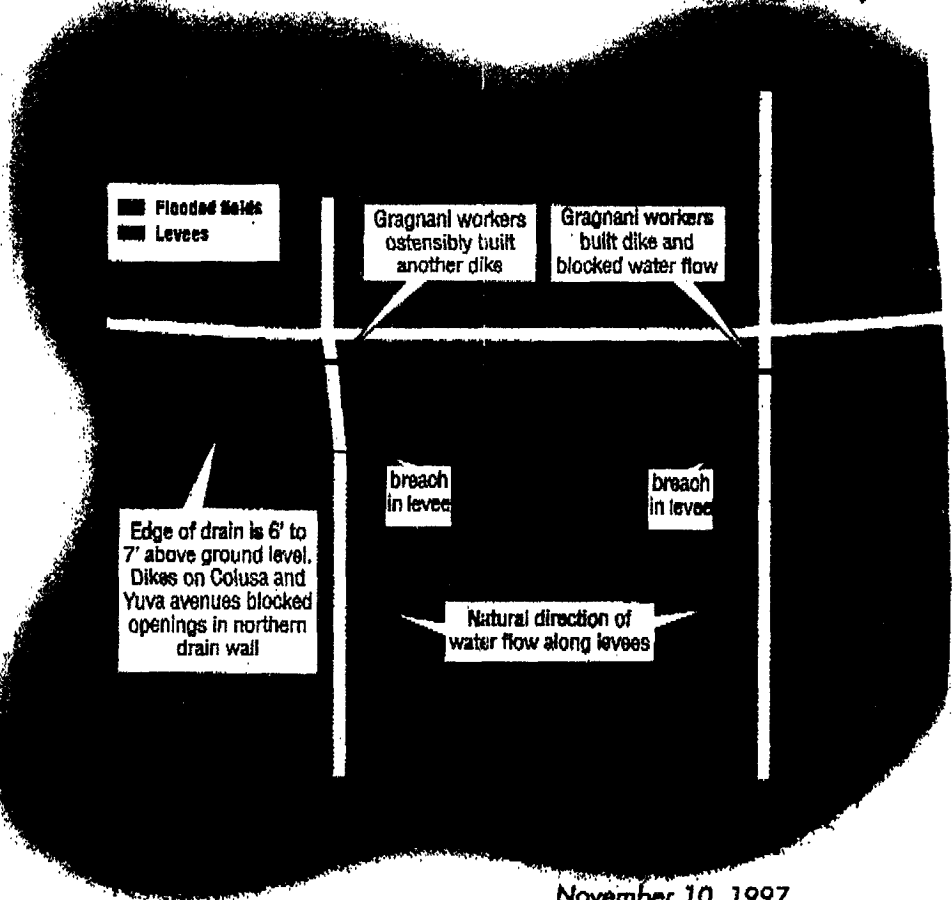
The pent-up water had nowhere to go but onto Freitas' fields, where it rose up some 6 feet, submerging his entire sugar-beet crop. The churning water also rushed over the berms on

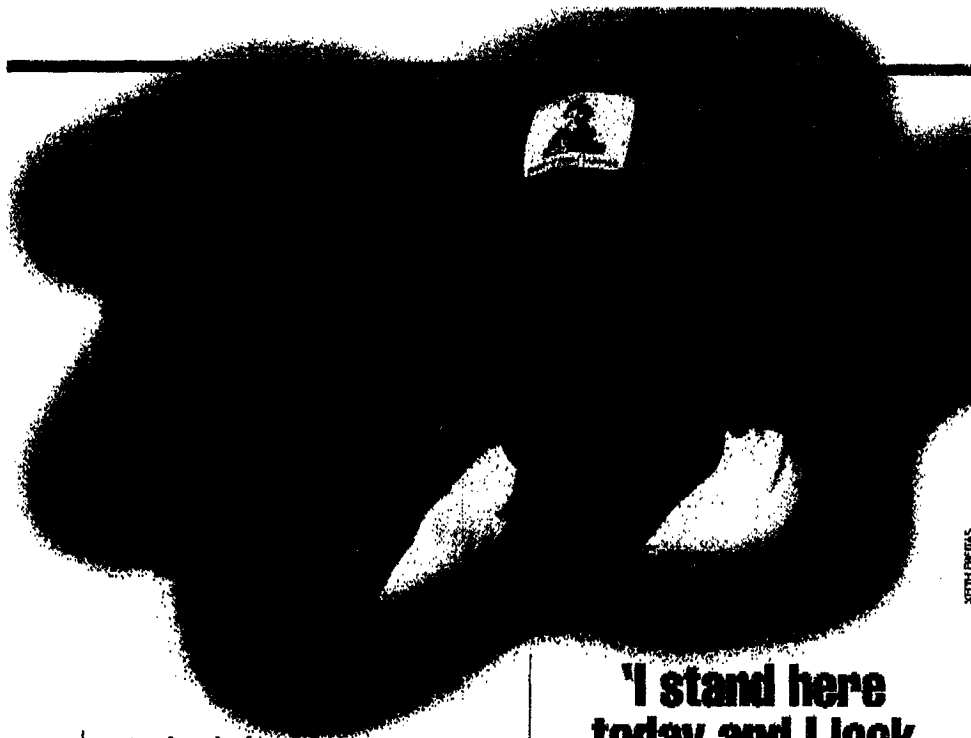
the side of the closed San Luis Drain, creating a treacherous selenium-laced cocktail that oozed toward the San Joaquin River. The tainted water was released into the river during the next two weeks. Two months later, the local water-quality board revealed that four times following the deluge selenium levels in the water exceeded federal limits.

"I don't know why they did this to me," Freitas wonders. "I asked them how they could do what they did and they just cursed me. But this much I know. I lost everything I had in that flood. Everything. And what has the federal government done? Well, nothing for me. But it's sure done a lot for Gragnani."

Even though the Bureau of Reclamation found that Gragnani employees did go onto federal property and divert water, causing it to flow onto Freitas' property and into the San Luis Drain, it chose not to file any formal complaint against the giant farm owner.

"We looked at the situation and we proceeded to follow our standard policy," says Rick Arndt, a realty specialist at the Bureau of Reclamation's Fresno office. "We have made available hydroelectric modeling that we had done following the flood and we have also made accessible all the studies. But there was no damage to any





*Freitas lost the farm when powerful neighbors diverted floodwaters from their crops and onto his property.*

Bureau of Reclamation property, so we had no reason to proceed legally."

Freitas had been wiped out by the big boys, and he did proceed. He blamed the Gragnanis for his loss and sued them in Fresno Superior Court for the damage to his fields. Two years and several lawyers later, he not only has received no legal satisfaction but is bankrupt and unemployed. In April he dropped his lawsuit against the Gragnanis — the result, he explains, of being unable to afford continued legal representation.

"I'm a small farmer, a family farmer," says Freitas. "I was going up against the big guys, and the big guys always get what they want."

The big guys may not always get what they want, but in the case of the Gragnanis it is easy to see why bitterness stalks Freitas like a thunderhead.

The Gragnani family owns or leases some 14,000 acres in the valley and has been farming their piece of paradise for some 50 years. Today, their DGF Partnership is ranked in the top 200 California farms, with annual crop yields worth more than \$9 million. It was not, they claim, their fault that the rains came and Freitas' land was flooded. They assert that Freitas might have saved his crop had he pumped the water off the land.

"What happened is that he came out here his first year and he had no idea what he was doing. This land floods and you have to be prepared for it," asserts Jerry Gragnani, scion of the

**'I stand here today and I look at this land and it breaks my heart. What happened out here was wrong, plain and simple. But nobody gives a damn.'**

farming giant. "This was a 200-year flood. But farmers on either side of his property managed to save their crops."

And, if Freitas claims to have lost everything in the flood, the Gragnanis have their own set of allegations. In fact, they have their own lawsuit against the Bureau of Reclamation claiming that they lost more than \$600,000 worth of crops in the same flood that wiped out Freitas because the Bureau of Reclamation provided no place for the floodwaters to go.

"At this point it looks as though the suit will come to trial in February of next year," Arndt says about the Gragnani case. "It's my understanding that we're moving forward." However, the pressure is on the bureau to settle with the big-time farm family.

While Freitas sits at home bankrupt with a 2-month-old baby and no job prospects, the Gragnanis are negotiating a deal with the U.S. Natural Resources Conservation Service, or NRCS, that could pay them \$2.72 million to turn 1,477 acres of their property

into wetlands. This deal is the Gragnanis' second with the NRCS, which in 1992 paid them \$1.82 million to create 1,090 acres of wetlands for migratory birds on their property. In the end the family will receive \$4.54 million for this rookery on 2,567 acres, at an average price of \$1,787 an acre.

The Gragnanis say they would like to settle their lawsuit; they say they don't care about the \$600,000. All they'd like is for the feds to ante up and build a conduit that would allow floodwaters, such as those that wiped out Freitas, to reach their wetlands. The Gragnanis want a conduit similar to the one they already had built but that the Bureau of Reclamation told them to remove.

This plays out like a 1940s Republic Pictures cowboy movie, with the big landholder damming up the water to drive out the nesters. And the Gragnani family has enjoyed the backing of some powerful supporters in their quest, including California's Democratic Sens. Barbara Boxer and Dianne Feinstein and Democratic Rep. Calvin Dooley, the local congressman.

"Calvin Dooley was here during the last floods," says Gragnani. "He saw the kind of problem we have down here."

Dooley has written several letters to the bureau urging them to work with the Gragnanis toward a settlement. "I am writing to urge the bureau's involvement in helping to solve a long-standing flooding problem caused, at least in part, by the San Luis Drain," Dooley wrote in one of several letters to Roger Parterson, the director for the Mid-Pacific Region of the Bureau of Reclamation.

"The Gragnanis have filed a claim with the bureau for compensation for damages caused by floodwaters," he continues. "However, they have said they are more interested in finding a long-term solution to the problem. One solution they have identified is to control the floodwater by directing it via syphon under the drain and into a conveyance ultimately directing it to newly established wetlands reserves. These reserves were created by the Gragnanis."

Freitas remains angry and finds Dooley's support of the Gragnanis particularly galling in light of the fact that Dooley's brother's law firm, Dooley and Herr, at one time represented him in his action against the Gragnani family. Unfortunately, even as Leonard

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PHOTOS BY KERRY FREITAS

*In the flood that wiped out the Freitas farm, the fields of neighbors (photo top) remained relatively unscathed.*

Herr was acting as lead attorney for Freitas, Daniel Dooley was working with a company whose major stockholders were the Gragnanis. When the conflict of interest was discovered, the firm withdrew from the Freitas case. Such entanglements are not unusual in farming regions.

If the construction of the vast water-works of California is a testament to man's ability to tame nature, the San Luis Drain, say some, was nature's revenge. When Congressman Dooley invokes the drain at the opening of his letter to the Bureau of Reclamation he points his finger at a public works fiasco that could cost taxpayers millions but make some people very, very rich.

The 1960 congressionally funded project was supposed to address the serious drainage problems confronting farmers in the San Joaquin Valley by sending their run-off water into the Bay Delta. Dense soil and clay layers at shallow depths prevent unused irrigation water from percolating into the deep aquifer. As irrigation water passes through the soil it picks up salts and other natural elements, including selenium. Unless the saline can be drained, it attacks the crop roots, reducing yields and eventually rendering the land barren. The promised San Luis Drain was going to give farmers a place to put

**If subsidized water from the Central Valley Project sells for about \$28 per acre-foot, out in the marketplace water can sell for as much as \$200 an acre-foot.**

that salty water and keep their land in production.

After just 85 miles of the drain and the initial stages of the Kesterson Reservoir were built, the project was scrapped. Congress yanked its funding amid concern about the long-term effects of dumping drainage water into the Bay Delta. However, after several years of negotiations and study a recommendation was made to proceed with the construction of a 290-mile canal.

Then in 1983 two wildlife biologists from the U.S. Fish and Wildlife Service discovered and made public a report on the high incidence of mortalities and deformities among Kesterson waterbirds. The trace-element selenium was identified as the culprit. In 1986, in a hotly contested agreement between the bureau and the Westlands Water District, the drain was closed and the face of farming in the Central Valley changed forever.

Today the Gragnanis aren't the only ones pointing fingers at the Bureau of Reclamation and invoking the San Luis Drain. In the adjacent Westlands Water District more than 100 farmers have sued both the district and the Bureau of Reclamation, alleging they have failed to provide them with adequate drainage in the wake of the closing of the San Luis Drain.

In a complex settlement negotiated between the Bureau of Reclamation, the Westlands Water District and landowners, the federal government is authorizing the Westlands Water District to act as a middleman in a deal that could retire upward of 75,000 acres of farmland and transfer millions of dollars of water rights into the hands of the country's largest agricultural water district. Farmers could receive upward of \$90 million for the land, so powerful interests are stirring.

The settlement comes even as the Bureau of Reclamation is pressing farmers voluntarily to retire a total of 75,000 acres of farmland from the region during the next 43 years as part of the 1992 Central Valley Project Improvement Act. Thirty-three thousand of those acres targeted for retirement lie within the Westlands Water District and overlap land owned by the litigants in the lawsuit.

The Bureau of Reclamation's plan is to turn the retired farmland into uplands wildlife habitat, not unlike those Gragnani wetlands. The trouble is the feds don't really have the money to buy all the land at once.

According to Bureau of Reclamation regional program manager Bob May, Congress has appropriated only about \$7 million for buying land in 1997-98. As the bureau plans to spend \$2,000 an acre for the property, only 3,000 acres can be purchased in the first year.

Enter the water district, which has offered to act as an intermediary in the proceedings and ante up all the money to buy any and all land put forth for retirement at fair market price. The district is, after all, a public agency with the power to raise money through water bonds — an agency controlled by the votes of the big landowners.

"There are two separate things going on," says Don Orth, director of the Westlands Water District. "There is the Bureau of Reclamation's public retirement program and the drainage settle-

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ment. Under both, Westlands has agreed to provide the financial resources to buy the land. Congress is not going to appropriate large amounts of money to do this. So we've stepped in."

"This allows the government to accomplish settlement of the drainage case. We can be ready to finance the land purchase in January of next year."

There's only one wrinkle in this highly profitable plan — should Congress come up with the funds to repurchase the acreage from the water district, Westlands wants to hold onto the federal water allocation that goes with the property. "If the U.S. chooses to purchase that land they will buy it at dry-land value," says Orth.

Freitas' experience to the contrary, and the drainage problem caused by the closure of the San Luis Drain aside, the biggest problem facing farmers in the San Joaquin Valley is a continued shortfall in their water supply. And in this part of the world water is the most valuable of liquid assets.

Despite the hydro-geologic problems plaguing the region, and the big landowners protecting their interests and profiting from it all, this is one of the most agriculturally productive areas in the country. Westlands proudly claimed more than \$770 million in gross crop value in 1994, which, using a standard rule of thumb, translated to nearly \$3 billion in economic activity for the region in 1994.

Under the terms of Westlands' contract with the Bureau of Reclamation the district is entitled to receive 1,150,000 acre-feet of federally subsidized water annually. Even in the best of times farmers argue that it is not enough.

These days, according to Orth, Westlands farmers must buy 25 to 35 percent of their water elsewhere — at a cost. If subsidized water from the Central Valley Project sells for approximately \$29 per acre-foot (the volume of water that would cover 1 acre to a depth of 1 foot), out in the marketplace where competition is fierce, water can sell for as much as \$200 an acre-foot.

The competition between agricultural and residential interests for water is likely to intensify. In Southern California, where the billionaire Bass brothers now lease more than 33,000

acres in the water-rich Imperial Valley, the specter of freewheeling water dealers looms large.

Unlike Westlands to the north, the Imperial was pulling water out of the Colorado River before the Hoover Dam was even a dream. Today, because of the legal doctrine, "first in time, first in right," that essentially gives the district first claim to the water, and the Imperial Irrigation District is the envy of its neighbors.

Should California experience a devastating drought, the Imperial Irrigation District would have the right to take its entire allotment of Colorado River water before a drop would go to the Metropolitan Water District, or MWD, which supplies the faucets of more than 16 million people in Los Angeles, Orange, San Diego, San Bernardino, Riverside and Ventura counties.

ly that it is his belief that individual farmers within Westlands don't have the right to sell their water.

"The district has a contract right to receive water from the Bureau of Reclamation," he says. "Individuals in the district have the ability to receive a proportionate share of that water. But if they were to try and exercise their right for that water we would argue that they don't have that right."

As for the notion that Westlands some day could be selling water to its urban neighbors, Orth scoffs, "We need all the water we can get."

The fact is that with the exception of floods such as that which wiped out Freitas, water is a scarcity in the West and only will get scarcer. As the population increases, competition between agriculture and residential usage likely will increase. California's powerful water districts, instruments of the large landowners, have flexed their muscles before and probably will continue to do so for a long time to come.

Freitas has stumbled since the floods. While he has had jobs working for other farmers, these jobs never seem to last very long. In the close-knit community he has the reputation of a firebrand and troublemaker. His mother has urged him to relocate and start over. Those he perceives as his enemies are just too powerful.

In September, Freitas ran unsuccessfully for a seat on the board of the Westlands Water District. He now claims that correct election procedures weren't followed. Westlands disputes the claim. Freitas has

filed a complaint alleging the improprieties with California Secretary of State Bill Jones — who ironically is a landowner in the Westlands Water District, a plaintiff in the lawsuit against the Bureau of Reclamation and Westlands and is on the shortlist of farmers contemplating land retirement for profit.

According to Jones' spokesman Alfie Charles, the secretary's office has no jurisdiction over the matter and they will be passing it on to the proper authorities. "We'll be turning over the complaint to the state attorney general or local district attorney, whichever is appropriate," says Charles.

Down on his luck in his struggle against the big boys, Freitas isn't hopeful.

**The San Luis Drain polluted fields and will cost taxpayers \$90 million in claims.**

That said, the MWD dearly would like to get its hands on some of Imperial Valley's water, and plans are afoot that would allow the valley to market its excess water to San Diego.

Some fear that such a plan would take valuable land out of farming, particularly if individual landowners were able to sell their water rights directly. Others argue that the value of the land for farming far outweighs what the water is worth on the open market.

In the Westlands Water District, Orth is careful to distance himself from the brewing storm in the south. He also stresses that it is unlikely Westlands would ever find itself in the position of having extra water to sell on the open market. And he states clear-